

Friends of the River  
1418 20<sup>th</sup> Street, Suite 100  
Sacramento, CA 95811

April 13, 2017

Delta Stewardship Council  
Attn: CEQA for Amending the Delta Plan  
980 9<sup>th</sup> Street, Suite 1500  
Sacramento, CA 95814

**via Email (to addresses below)**

[deltaplanNOP@deltacouncil.ca.gov](mailto:deltaplanNOP@deltacouncil.ca.gov)  
[deltacso@deltacouncil.ca.gov](mailto:deltacso@deltacouncil.ca.gov)

**via Email**  
**via Email**

**Re: Written CEQA Scoping Comments for Delta Stewardship Council's preparation of a Program Environmental Impact Report (EIR) for proposed amendments to the Delta Plan for Delta Conveyance, Storage, and Operations**

Dear Delta Stewardship Council Staff:

## INTRODUCTION

We request that the DSC not go forward at this time with a Plan amendment on conveyance. The reason is that the required analyses and evaluations to lawfully and intelligently do so have not been done. As we have said before, *the DSC must do the planning before the plumbing*.

Our public interest organizations<sup>1</sup> make these comments seeking compliance by the Delta Stewardship Council (DSC) with the California Environmental Quality Act (CEQA) and the Delta Reform Act (DRA) in the course of amending the Delta Plan. These comments follow up on our previous comment letters of March 7 and March 20, 2017.<sup>2</sup>

This letter is focused on conveyance. That said, the required analyses and evaluations are likewise lacking at this time with respect to attempting to go forward on storage and the operations of both conveyance and storage.

The scope of the CEQA and DRA violations evidenced by the Draft Plan amendment on conveyance, and the Notice of Preparation, is profound. The DSC is supposed to be creating and revising the long-term management plan for the Delta. That means the DSC should be in charge. Instead, the DSC Plan Amendment on conveyance and the NOP accept the Water Fix Tunnels project proposed by the federal Bureau of Reclamation and the California Department of Water Resources (DWR) as an ipse dixit, as a given. The DSC attempts to accomplish this *before* complying with the Court order to revise the Delta Plan to provide a flow policy that includes “quantified or otherwise measurable targets associated with achieving reduced Delta Reliance.” Other requirements set forth in our earlier letters or discussed below are likewise evaded. This is an obvious attempt to adopt the Water Fix Tunnels conveyance alternative *before* doing the analysis required by CEQA, the Court order, and the DRA that would demonstrate the infeasibility or undesirability of the Tunnels project.

The California Supreme Court’s most recent CEQA decision reiterates that CEQA “helps ensure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.” *Banning Ranch Conservancy v. City of Newport Beach*, \_\_Cal.4<sup>th</sup> \_\_, 2017 WL 1174436 \*12 (March 30, 2017). Here, the DSC Draft Plan amendment on conveyance and the NOP attempt to sweep all of the stubborn problems and criticisms of the Water Fix Tunnels under the rug by falsely claiming the conveyance alternative selected is not a specific project requiring a project-level EIR. That constitutes failure to proceed in the manner required by CEQA.

The DSC description of its process is inaccurate. To be blunt, it is misleading. The opening language of the DSC’s posted Informational Flyer for the scoping meeting recited:

---

<sup>1</sup> AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Justice Coalition for Water, Environmental Water Caucus, Friends of the River, Planning and Conservation League, Restore the Delta, and Sierra Club California join in this letter.

<sup>2</sup> We adopt and incorporate by this reference our March 7 and March 20, 2017, letters to the DSC and their attachments, and attach the Letters and their Attachments for the CEQA Record.

The Delta Stewardship Council, pursuant to CEQA guidelines, will host a public scoping meeting to receive oral and written comments for the Council's preparation of a *Program Environmental Impact Report (EIR)* for proposed amendments to the Delta Plan in three areas: • Delta Levee Investment and Risk Reduction Strategy • *Delta Conveyance, Storage, and Operations* • Performance Measures... (Emphasis added).

The Notice of Preparation (NOP) posted March 16, 2017 likewise stated (at p. 1) that:

Notice is hereby given that the Delta Stewardship Council (Council) will prepare a *program environmental impact report (Program EIR or EIR)* for proposed amendments to the Delta Plan (Proposed Project), and will hold one public scoping meeting to receive comments on the scope of the EIR, as detailed below.

In fact, the EIR required by CEQA will not be a *Program EIR*. It will be a *specific project EIR* on the Water Fix Tunnels. The Water Fix is a specific enough project that it is the subject of an 80,000 page FEIR/EIS issued by the federal Bureau of Reclamation and California Department of Water Resources (DWR) in December 2016.

The DSC discussion Draft Plan amendment makes the Water Fix Tunnels the *promoted option* (DSC Agenda Item 12, attachment 3, p. 5, February 23, 2017 meeting):

The California Department of Water Resources (DWR) and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) should pursue a dual-conveyance solution for the Delta by *constructing new facilities for isolated, below-ground conveyance of State Water Project (SWP) and Central Valley Project (CVP) water supplies from the Sacramento River to the South Delta via multiple intakes*. . . (emphasis added)

And, the DSC makes the Water Fix Tunnels the *proposed conveyance alternative* (DSC Notice of Preparation of Draft EIR for amendments to Delta Plan, p. 10, March 16, 2017):

Guided by Water Code Section 85304, the Delta Plan, and the 19 Principles, the Council now proposes to amend the Delta Plan to promote recommended options . . . Below is a summary of the promoted recommendations:

Options for New and Improved Water Conveyance and Diversion Infrastructure in the Delta, including the following:

*New intakes and diversions and conveyance facilities in the North Delta* to improve the quality and reliability of deliveries. . . ;

Conveyance improvements that allow use of multiple Delta intakes to increase operational flexibility . . . (emphasis added). . .

That Plan Amendment and NOP language *is* the Water Fix Tunnels project. Again, we request that the DSC not go forward at this time with a Plan amendment on conveyance. The reason is that the required analyses and evaluations to lawfully and intelligently do so have not been done. We request the DSC members to require the deletion of the above conveyance language from the Draft Plan Amendment and from the NOP. If the DSC nevertheless does proceed with the Plan amendment on conveyance, it will be necessary for the DSC to proceed in

good faith under CEQA to prepare a *specific project-level* Draft EIR on the Water Fix Tunnels project and to accomplish the other tasks set forth herein.

***The Current proposed Draft Plan Amendment on Conveyance is the specific Water Fix Tunnels Project***

The Notice of Preparation (NOP) of the Draft Program EIR for Proposed Amendments to the Delta Plan (March 16, 2017) misleads the public about the project. The NOP states “The Council is not proposing, nor would the proposed Delta Plan Amendments require, specific projects at specific locations. While the Program EIR will review the potential physical environmental effects of potential types and locations of reasonably foreseeable compliance responses, it will not provide project-level environmental review for any specific projects.” (NOP p. 13).

At the February 23, 2017 DSC meeting, several DSC members raised questions about the Draft Plan amendment on conveyance, storage and operations. “Member Weinberg asked if we are advocating for new facilities and storage and what is the role of groundwater storage? He said it was not clear to him if the Council is advocating for these as part of the solution.”<sup>3</sup> “Mr. Weinberg suggested considering more discussion in the problem statement regarding the status quo in order to make the case as to why this action is needed. Specifically, more details about why these recommendations are being made and tying the recommendations to the problem statement; be clear that we are interested in reducing reliance on the Delta; better define regions; and develop metrics and performance measures that are consistent with our goals.” “Member Johnston concurred with Member Weinberg’s point regarding the document’s need to stand on its own by providing justification for the recommendations. The tone of the document needs to be balanced; it is currently framed as a water exporter would frame it. The tone needs to shift in order for us to address the coequal goals effectively. We need to make the case for environmental improvement not just a mitigation necessity.” “Judge Damrell echoed Member Johnston’s comment regarding tone and balance and suggested looking at the problem statement to address this.”

“Member Thomson referred to page 5, line 15, and asked why the Council is making recommendations on specific projects? Ms. Pearson responded that is the way staff is interpreting ‘promoting options.’”

So, following review of the Draft Plan Amendment, DSC member Weinberg asked if the DSC is advocating for new facilities. DSC member Thomson concluded the Draft is in fact making a recommendation on a specific project— the Water Fix Tunnels. This confusion and uncertainty graphically demonstrates violation of CEQA’s requirement for “an accurate, stable, and finite project description” set forth below.

The Water Fix proponents are not misled or uncertain. At the March 2017 meeting of the Metropolitan Water District Special Committee on the Bay Delta, Mr. Stan Arakawa, Manager of MWD’s Bay-Delta Initiatives Program explained: “As the California Water Fix has been moving forward, the Stewardship Council has been talking about how do they now go through

---

<sup>3</sup> All references in this and the next paragraph are to the DSC Meeting Summary of the February 23, 2017 DSC meeting, Agenda Item 6, March 23, 2017, p. 12.

their decision making process, given that it's no longer a Bay Delta Conservation Plan, it's now a proposed California Water Fix," he said. "They adopted some principles a couple of years ago when they initiated a process to amend the Delta Plan so that they could be in a position to deal with this proposed project and that's what we're talking about when we're talking about conveyance, storage, and operations. It deals with not only the facilities themselves related to Cal Water Fix, but operations and storage and how the three of those work together." "The amendments would promote options for new and improved conveyance including dual conveyance, and that's what California Water Fix is by definition," Mr. Arakawa said.<sup>4</sup>

The DSC consultants and Staff are simply doing what the Water Fix proponents want, trying to rush through adoption of the Water Fix Tunnels project. At the March 24, 2017 scoping meeting the Staff showed a schedule under which the Draft EIR would be issued in the summer of 2017; followed by a 45 day public review period; and concluding with issuance of the Final EIR in Fall/Winter 2017.

But then there is the law. The California courts have repeatedly held under CEQA that:

An accurate, stable and finite project description is the *sine qua non* [absolutely indispensable requirement] of an informative and legally sufficient EIR. [citation deleted]. However, a curtailed, and enigmatic or unstable project description draws a red herring across the path of public input. [citation deleted]. Only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives. *E.g., San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal.App.4<sup>th</sup> 645, 654 (2007) (project description held unstable and misleading) (internal quotation marks deleted).

The most recent California Supreme Court CEQA decision reminds that "While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (Guidelines, § 15144.)" *Banning Ranch Conservancy v. City of Newport Beach*, \_\_Cal.4<sup>th</sup> \_\_, 2017 WL 1174436 \*11 (March 30, 2017)(reversing and holding EIR inadequate). The State Supreme Court emphasized that "*To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.*" *Id.*, 2017 WL 1174436 \*9; CEQA Guidelines, 14 Cal. Code Regs §§ 15124(d)(1)(C); 15006(i). And, of course, "Evaluation of project alternatives and mitigation measures is '[t]he core of an EIR.'" *Id.*, 2017 WL 1174436 \*10.

In contrast to what CEQA requires, there is an inaccurate, misleading project description. The Water Fix is a specific, definite project for CEQA alternatives analysis purposes, being the subject of the 80,000 page December 2016 FEIR/EIS. Here, the Draft Plan Amendment and the NOP instead of making full disclosure tries to misrepresent that the promoted conveyance option and preferred conveyance alternative is not a specific project. 80,000 pages are specific enough to compare the Water Fix Tunnels alternative with retaining through-Delta conveyance. Instead of integrating the Delta Plan Amendment CEQA review with the actual project proposed by DWR and Reclamation, DSC documents issued so far try to pretend that this is just a program

---

<sup>4</sup> Discussion reported in Maven's Notebook (April 4, 2017).

and not a specific project. The DSC consultants and Staff are trying to get the DSC to adopt the Water Fix Tunnels conveyance alternative while pretending that is not what they are doing.

The apparent purpose of this misrepresentation is to evade a fair and accurate comparison of the through-Delta and the dual conveyance alternatives. “CEQA procedures ‘are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.’” *Banning Ranch Conservancy*, 2007 WL 1174436 \*10. In addition to evading required systematic CEQA alternatives analysis, this misrepresentation evades the DRA § 85320(b)(2) required “comprehensive review and analysis” of through-Delta conveyance as well as dual conveyance.

Through misrepresentation and segmentation, the effort here is to grease the skids for the Water Fix Tunnels by looking at dual conveyance in a vacuum divorced from reality. The dual conveyance project *is* the Water Fix Tunnels. There is a difference between having a small dog or an elephant in a room. Likewise, there is a difference between filling a water bottle upstream from the Delta, or constructing giant Tunnels with the capacity to divert the entire typical summer freshwater flow from the Sacramento River upstream from the Delta.

The next DSC step should not be aiding and abetting the Water Tunnels fiasco by trickery. The next step should be complying with the Court order to revise the Delta Plan to provide a flow policy that includes “quantified or otherwise measurable targets associated with achieving reduced Delta reliance.”

***The Conveyance Decision is the Last, not the First, Piece of the Delta Restoration Puzzle***

DSC member Thomson raised the question at the March 23, 2017 DSC meeting in Brentwood about; why is the conveyance portion of the plan being developed separately instead of developing all portions as part of one plan? The only apparent reason for the segmentation would be to make a decision in favor of the Water Fix Tunnels while evading the CEQA requirement to provide project-level environmental review for the specific Water Fix Tunnels project. This also evades the “comprehensive review and analysis” required by the DRA, § 85320(b)(2) that might (or as we say, would) demonstrate the undesirability or infeasibility of the Water Fix project. This also is clear evasion of the Court determination requiring revision of the Delta Plan to include among other things, “quantified or otherwise measurable targets associated with achieving reduced Delta reliance, . . .” (Writ issued in Delta Stewardship Council Cases, November 23, 2016). Plainly, those targets must be developed *before* making a decision to make the Water Fix project the promoted conveyance option and preferred conveyance alternative because the targets could (we would say, would) make the Water Fix infeasible given the remaining amount of water available for export.

The DSC cannot lawfully adopt a Plan amendment on conveyance until *after*:

*doing* the “comprehensive review and analysis” of “A reasonable range of Delta conveyance alternatives” “including through-Delta, dual conveyance, and isolated conveyance alternatives. . .” *required* by the Delta Reform Act (DRA) (Water Code) § 85320(b)(2)(B);

*revising* the Delta Plan to provide a flow policy that includes “quantified or otherwise measurable targets associated with achieving reduced Delta reliance” as *required* by the Court decision determining the Delta Plan to be invalid;

the State Water Resources Control Board *adopts* new Delta flow criteria that “will be more stringent than petitioners” [the exporters] current obligations; and

*doing* benefit-cost analysis to determine if the Water Fix Tunnels is even a *feasible* alternative given the existing evidence that costs exceed the benefits requiring a public subsidy whereas subsidy is *prohibited* by DRA § 85089 prohibiting initiation of “construction of a new Delta conveyance facility” unless the exporters have made arrangements to pay for all costs including planning, design, construction, and mitigation.

The rush schedule set forth in the preceding section of this letter shows the intent to quickly get the Draft and Final EIR’s issued *before* any of the analyses would be done that could (we would say would) demonstrate the infeasibility or undesirability of the Water Fix Tunnels project. This appears to be an effort to violate the CEQA Guidelines, § 15384 requirement that conclusions be based on “substantial evidence.” Conclusions are not to be based on “argument, speculation, unsubstantiated opinion or narrative, evidence which is erroneous or inaccurate . . .” The wrongful intent here is to get the DSC members to make the decision adopting the Water Fix Tunnels new conveyance alternative in the absence of the substantial evidence that would be developed by doing the above analyses.

The DSC staff prepared documents recite that the call for the new dual conveyance is “Guided by Water Code Section [DRA] 85304, the Delta Plan, and the 19 Principles, , .” (Notice of Preparation at p. 10, March 16, 2017). In fact, there is no such “guidance” provided by these things. DRA § 85304 does not call upon the DSC to promote dual conveyance and the Water Tunnels. Section 85304 states:

The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals.

There is nothing in that statutory language pointing toward or even mentioning dual conveyance and the Water Fix Tunnels. The language does suggest that it is time to finally consider calling for improvement to the fish screens for the existing pumps in the South Delta. We understand the exporters and DWR do not want to make those improvements because they like to bootstrap from the inadequate existing fish screens to make an argument for new conveyance. But the DSC are supposed to be good stewards for the Delta as opposed to being salespersons for the Water Tunnels.

The Delta Plan does *not* point toward dual conveyance and the Water Fix Tunnels. As we pointed out in our March 20, 2017 letter, the Final EIR on the Delta Plan stated:

the proposed Delta Plan does *not* make any recommendations regarding conveyance at this time because the Council has determined that the BDCP agencies are in the best

position to complete the planning process, including defining acceptable ranges of exports and through-Delta flows. *Accordingly, the PEIR does not evaluate the potential environmental consequences of various BDCP options that DWR may be considering.* (FEIR, p. 3-15, May 2013) (emphasis added).

The 19 Principles were adopted by the DSC in November 2015. That was six months *before* the Court determined the Delta Plan to be invalid under the DRA. If it is necessary to again seek judicial relief because of refusals by the DSC to comply with the DRA, judicial review will be based upon CEQA, the DRA and the prior Court decision. Judicial review will not be based upon the 19 Principles.

Instead of making the conveyance decision the first piece of the puzzle, this should be the last piece of the puzzle. Instead of fulfilling its statutory role of stewardship over the Delta, the efforts of the consultants and Staff to date appear to simply be acting as proponents for the Water Fix project. Again, as two Council members pointed out at the February 23, 2017 DSC meeting, “the document . . . is currently framed as a water exporter would frame it.” The federal Bureau of Reclamation and California Department of Water Resources (DWR) are proponents for the Water Fix Tunnels. The DSC needs to function as good stewards and comprehensive long-term management planners for the Delta. It is time for a course correction ensuring compliance by the DSC with CEQA and the DRA.

***The Water Fix Project is not a Feasible Alternative because Subsidized new Conveyance is prohibited by the DRA***

Project proponents often argue that alternatives to projects they seek to carry out do not have to be analyzed because they are infeasible. *Here there is an extraordinary situation in which the proposed project is demonstrably infeasible.* The DRA requires that the exporters pay all costs for a new Delta conveyance facility. Because the costs greatly exceed the benefits of this giant boondoggle, the exporters are not willing to pay all costs. Thus the project is not feasible under California law. The DRA provides in § 85089 as follows:

Construction of a new Delta conveyance facility shall *not* be initiated *until* the persons or *entities that contract to receive water* from the State Water Project and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts *to pay for both of the following*:

(a) *The costs* of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with [Section 21000 of the Public Resources Code](#)), *required for the construction, operation, and maintenance of any new Delta water conveyance facility.*

(b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities. (Emphasis added).

As explained in our March 7 and 20, 2017 letters, the State’s own study, the *Water Fix Economic Analysis* (November 15, 2015) prepared for the California Natural Resources Agency by David Sunding, showed that a subsidy would be necessary for the project. Not liking the



answer, the State hid that analysis and it took many months to get it by making demands under the Public Records Act. We attached the *Benefit-Cost Analysis of The California Water Fix* (August 20, 2016), prepared by Dr. Jeffrey Michael of the University of Pacific to our March 20, 2017 letter. That analysis showed “the Water Fix costs are four times larger than its benefits, and thus the project is not economically justified.”

This is what is going on here. California has proven to be an impressive offender in inflicting megaproject fiascos on taxpayers. The recent Oakland-San Francisco Bay Bridge reconstruction exploded from a projected \$1 billion project to a project costing over \$6 billion riddled with defects. And there have been huge cost overruns during the construction of the \$4 ½ billion Trans Bay Transit Center in San Francisco. Willie Brown, former San Francisco mayor and speaker of the California State Assembly has written about that project: “We always knew the initial estimate was way under the real cost. . . The idea is to get going. Start digging a hole and make it so big, there’s no alternative to coming up with the money to fill it in.” Willie L. Brown, Jr., *When Warriors Travel to China, Ed Lee Will Follow* (San Francisco Chronicle, July 27, 2013); Jacques Leslie, *The Trouble with Megaprojects* (The New Yorker, p. 4, April 11, 2015); Chris Edwards and Nicole Kaeding, *Federal Government Cost Overruns* (Cato Institute, Tax & Budget Bulletin, September 2015).

This rush to get the Water Fix Tunnels project going *before* rather than *after* doing the required analyses and evaluations is part of the scheme to “start digging a hole and make it so big, there’s no alternative to coming up with the money to fill it in.” That would be contrary to the mission of the DSC to be good stewards and comprehensive long-term term planners for the Delta.

CEQA in Public Resources Code § 21001(g) establishes State Policy to:

Require governmental agencies at all levels to consider qualitative factors as well as *economic and technical factors and long-term benefits and costs*, in addition to short-term benefits and costs and *to consider alternatives to proposed actions* affecting the environment. (emphasis added).

CEQA was modeled on the National Environmental Policy Act (NEPA). California courts treat NEPA decisions as persuasive authority on CEQA issues when the statutes are parallel.<sup>5</sup> In *Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 811 (9<sup>th</sup> Cir. 2005), the Ninth Circuit held under NEPA that “Inaccurate economic information may defeat the purpose of an EIS by ‘impairing the agency’s consideration of the adverse environmental effects’ and by ‘skewing the public’s evaluation’ of the proposed agency action.” The Court found that “the market-demand error was sufficiently significant that it subverted NEPA’s purpose of providing decision makers and the public with an accurate assessment of the information relevant to evaluate the Tongass Plan.” 421 F.3d at 812. The Court concluded that:

---

<sup>5</sup> In *Wildlife Alive v. Chickering*, 17 Cal.3d 190, 201 (1976) the California Supreme Court explained: “We have previously relied upon federal cases construing NEPA in determining the scope of application of parallel provisions of CEQA [citation omitted]. Recognizing that the California act was modeled on the federal statute, we have consistently treated judicial and administrative interpretation of the latter enactment as persuasive authority in interpreting CEQA.”

the Forest Service presented misleading economic effects of the Plan significant to its evaluation of alternatives considered by the Plan, and the public was similarly misled in its opportunity for comment. We hold that the Forest Service violated NEPA's procedural requirement to present complete and accurate information to decision-makers and to the public to allow an informed comparison of the alternatives considered in the EIS. 421 F.3d at 813.

The fact that the Record demonstrates the infeasibility of the Water Fix Tunnels project is critical. Again, because the costs exceed the benefits, the exporters are unwilling to pay for the project. However, the DRA in § 85089 requires the exporters to pay all costs for a new Delta conveyance facility

The CEQA Guidelines, 14 Cal. Code Regs § 15364, define "feasible" to mean:

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account *economic, environmental, legal, social, and technological factors*. (Emphasis added).

The Water Fix Tunnels new conveyance is not feasible because it is not legal. The DRA prohibits a subsidized new conveyance project. The Tunnels new conveyance is also not feasible because the Record demonstrates that the costs would greatly exceed the benefits of the project. In addition, it would not be possible to determine whether the Tunnels new conveyance would be environmentally feasible without doing CEQA required project-level environmental analysis; doing the comprehensive review and analysis of the through-Delta conveyance and dual conveyance alternatives required by the DRA; revising the Delta Plan to provide a flow policy that includes "quantified or otherwise measurable targets associated with achieving reduced Delta reliance as required by the Court order; awaiting State Water Resources Control Board adoption of new Delta flow criteria that will be more stringent than the exporters current obligations; and doing comparative benefit-cost analysis of the Water Fix new conveyance alternative and the existing through-Delta conveyance if the DSC does not accept the state of the Record that the costs greatly exceed the benefits of the Water Fix Tunnels.

***If the DSC proceeds with the dual conveyance Plan amendment everything mentioned herein is within the Scope of the Draft EIR to be prepared***

The DSC should not proceed with attempting to adopt a Plan amendment on conveyance at this time. The "dual-conveyance solution" language in the draft Plan amendment (set forth on page 2 of this letter) and the "options for new and improved water conveyance" language in the NOP (set forth at pages 2-3 of this letter) should be deleted. As set forth above, proceeding at this time to adopt a Plan amendment on conveyance will constitute failure to proceed in the manner required by CEQA, the DRA, and the Court ruling.

If, however the DSC does proceed with the attempt to adopt a Plan amendment on conveyance, all of the analyses set forth above are within the scope of the Draft EIR that would have to be prepared:

A specific project-level Draft EIR would have to be prepared on the Water Fix Tunnels project;

The Draft EIR would have to include and be based on the comprehensive review and analysis of a reasonable range of Delta conveyance alternatives including through-Delta;

The Draft EIR would have to include reasonable alternatives reducing exports in order to increase freshwater flows through the Delta;

The Draft Plan and Draft EIR would have to include a flow policy that includes quantified or otherwise measurable targets associated with achieving reduced Delta reliance as required by the Court decision determining the Delta Plan to be invalid;

The Draft Plan and Draft EIR would have to be based on new Delta flow criteria adopted by the State Water Resources Control Board that will be more stringent than the exporters current obligations;

The Draft Plan and Draft EIR would have to be based on benefit-cost analysis comparison of the Water Fix project with through-Delta conveyance;

Under CEQA, “Decision-makers must, under the law, be presented with sufficient facts to ‘evaluate the pros and cons of supplying the amount of water that the [project] will need.’” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4<sup>th</sup> 412, 432 (2007), so the Draft EIR would have to include this information;

The scope of the Draft EIR would have to include all other issues, analyses and subjects required by CEQA and the DRA.

As explained in *Mountain Lion Coalition v. Fish & Game Com*, 214 Cal.App.3d 1043, 1052 (1989), only when the draft environmental document is circulated do the public and outside agencies have the opportunity to analyze a proposal and submit comment. To evaluate the draft environmental document in conjunction with the final environmental document would only countenance the practice of releasing a report for public consumption that hedges on important environmental issues while deferring a more detailed analysis to the final environmental document that is insulated from public review.

The rush schedule discussed above establishes a scheme to issue the Draft EIR this summer; allow only a 45 day period for public review; and then issue the Final EIR Fall/Winter 2017. This evidences an intent to evade CEQA by issuing an essentially useless Draft EIR as part of the scheme to quickly approve the Water Fix project in the absence of the contrary substantial evidence that would be developed by performing the analyses set forth above. If carried out this will be blatant failure to proceed in the manner required by CEQA, requiring preparation of yet another Draft EIR.

## CONCLUSION

As we said at the beginning, we request that the DSC not go forward at this time with a Plan amendment on conveyance. We also request that the NOP be withdrawn. The reason is that

the required analyses and evaluations to lawfully and intelligently go forward so have not been done.

The decision between the new, dual conveyance Water Fix Tunnels project on the one hand, or retaining existing through-Delta conveyance and beginning to finally reduce exports to increase freshwater flows through the Delta on the other hand is a profoundly important long-term planning decision. The Draft Plan Amendment pertaining to conveyance and the NOP evidence a scheme to evade the requirements of both CEQA and the DRA to first perform comprehensive analyses of critical issues such as *what* quantified or otherwise measurable targets to set associated *with achieving reduced Delta reliance*. Instead, the scheme is to push forward a demonstrably infeasible project on the current Record in a rush to approve the project before doing any of the analyses that would *substitute* substantial evidence, *for* mere argument, speculation, unsubstantiated opinion or narrative. The DSC has *not* performed the required analyses to be in position to adopt or even consider adopting the dual conveyance Water Fix alternative. Attempting to do so at this time will constitute failure to proceed in the manner required by CEQA and the DRA. Should you have any questions, please contact Conner Everts, Facilitator, Environmental Water Caucus at (310) 804-6615 or [connere@gmail.com](mailto:connere@gmail.com), or Robert Wright, Senior Counsel, Friends of the River at (916) 442-3155 ext. 207 or [bwright@friendsoftheriver.org](mailto:bwright@friendsoftheriver.org).

Sincerely,



E. Robert Wright, Senior Counsel  
Friends of the River



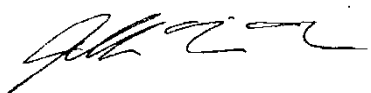
Bill Jennings, Executive Director  
California Sportfishing Protection Alliance



Barbara Barrigan-Parrilla, Executive Director  
Restore the Delta



Conner Everts, Facilitator  
Environmental Water Caucus



Jeff Miller, Conservation Advocate  
Center for Biological Diversity



Carolee Krieger, Executive Director  
California Water Impact Network



Barbara Vlamis, Executive Director  
AquAlliance



Kyle Jones, Policy Advocate  
Sierra Club California



Colin Bailey, Executive Director  
Environmental Justice Coalition for Water



Jonas Minton, Senior Water Policy Advisor  
Planning and Conservation League